

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

LOVELY SKIN, INC.,)	CASE NO.:
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	"DEMAND FOR JURY TRIAL"
ISHTAR SKIN CARE PRODUCTS,)	
LLC,)	
)	
Defendant.)	

Plaintiff, for its cause of action against Defendant states and alleges:

JURISDICTION & VENUE

1. Plaintiff, Lovely Skin, Inc. is a corporation duly organized and existing under the laws of the State of Nebraska with its principal place of business in Omaha, Douglas County, Nebraska.

2. To the knowledge and belief of Plaintiff, Defendant is a Limited Liability Company organized and existing under the laws of the State of California with its principal place of business in Granada Hills, California.

3. Jurisdiction herein is based upon diversity of citizenship with the amount in controversy exceeding the sum of values specified by 28 U.S.C. § 1332. This action also arises under the Trademark laws of the United States, 15 U.S.C. § 1121.

COUNT I - TRADEMARK INFRINGEMENT

4. Plaintiff incorporates paragraphs 1-3 above as if fully set out herein.

5. Plaintiff, since 2003 is engaged in a business which owns, operates and maintains the supply, sale and advice regarding cosmetic and skin care products and to market same by means of over the counter and internet sales and to perform health care studies. Plaintiff has carried on said business throughout the United States and world by the use of the world wide internet.

6. Plaintiff has, since 2003, marketed its products under the distinctive Servicemark "LovelySkin.com" with a distinctive website. Plaintiff's use of the distinctive

website has been and continues to be widely publicized through extensive advertising and sales throughout the United States. By virtue of the extensive advertising and sales of Plaintiff's product, using its unique website under the registered Trademark "LovelySkin" and Servicemark "LovelySkin.com", this website has become distinctive and recognized so that members of the purchasing public, seeing this trademark along with its website, identifies it with Plaintiff and Plaintiff alone.

7. Plaintiff is the owner of the Trademark "LovelySkin", Registration Number 2998098, dated September 20, 2005; and Servicemark "LovelySkin.com", Registration Number 3253791, dated June 19, 2007, and Servicemark "LovelySkin.com" (stylized), Registration Number 2327469, dated March 7, 2000. The registrations are presently in full force and effect and are owned by Plaintiff. By compliance with 15 U.S.C. § 1065, Plaintiff's right to use the Trademark "LovelySkin.com" along with its website in commerce has become incontestable and the registrations are conclusive evidence under 15 U.S.C. § 1115 (b) and of Plaintiff's exclusive right to use the trademarks in commerce. Attached hereto, marked as Exhibits "A", "B" and "C" are copies of the registrations.

8. Notwithstanding Plaintiff's well known and prior established right in its trademarks "LovelySkin" and "LovelySkin.com", its website - a specimen of which is attached hereto marked as Exhibit "D" and otherwise distinctive and unique package, Defendant has adopted, advertised and used in commerce in connection with the sale of cosmetic and skin care products, a website - a specimen of which is attached hereto, marked as Exhibit "E", bearing the name LivelySkin.com; the use of this name along with its website simulates substantially Plaintiff's trademark and the appearance of Plaintiff's distinct and unique package and designation of origin. The name LivelySkin.com is a reproduction, counterfeit, copy or colorable imitation of Plaintiff's registered Trademark "LovelySkin.com" and its website - a specimen of which is attached hereto marked as Exhibit "E" are likely to cause confusion or mistake or to deceive and, hence, infringe upon Plaintiff's right in the registered trademark and in violation of 15 U.S.C. § 1114 (1).

COUNT II - COMMON LAW, UNFAIR COMPETITION

9. Plaintiff incorporates paragraphs 1- 8 of Count I as if fully alleged herein.
10. Plaintiff alleges on information and belief that Defendant has, by careful and considered planning, intentionally advertised and sold skin care products in a package bearing the trade name LivelySkin.com to simulate the appearance of Plaintiff's distinctive website and Plaintiff's registered trademark of LovelySkin.com so as to thereby confuse and deceive purchasers and to obtain acceptance of Defendant's products based on the merit, reputation and goodwill of Plaintiff and Plaintiff's products; and that the acts enable Defendant to compete unfairly with Plaintiff by pawning off Defendant's products as those of Plaintiffs, all to Plaintiff's and the public's irreparable damage.

COUNT III -UNFAIR COMPETITION

11. Plaintiff incorporates paragraphs 1-10 of Counts I and II above as if fully set out herein.
12. Defendant's use in commerce of the false designations of origin herein above pleaded is in violation of 15 U.S.C. § 1125 (a).

COUNT IV - INJURY TO BUSINESS REPUTATION

13. Plaintiff incorporates paragraphs 1 - 12 of Counts I, II and III as if fully set out herein.
14. Plaintiff, having adopted and used the distinctive Trademark "LovelySkin" and Servicemark "LovelySkin.com" and its distinctive website as herein above pleaded for many years prior to Defendant, throughout the United States alleges, upon information and belief that by reason of Defendant's subsequent use of the confusingly similar trade name of LivelySkin.com, the confusing similar website, label and package, on the internet in a manner herein above plead, there exists a likelihood of injury to the business reputation of Plaintiff and of the dilution of distinctive quality of Plaintiff's trademark and label in violation of (Neb. Rev. Stat. § 87-302(a)(1)).

WHEREFORE, Plaintiff prays:

- a. For an order that its Trademark "LovelySkin", Registration Number 2998098, dated September 20, 2005; and Servicemark "LovelySkin.com", Registration Number 3253791, dated June 19, 2007, and Servicemark "LovelySkin.com" (stylized), Registration Number 2327469, dated March 7, 2000, are valid and the property of Plaintiff;
- b. An order that Defendant has infringed upon Plaintiff's Trademark, "LovelySkin.com", has competed unfairly with Plaintiff, has diluted the distinctiveness of the trademark and has injured Plaintiff's business reputation by using LivelySkin.com as a trademark and a colorable imitation and other design elements with the offering for sale of cosmetics and skin care products in commerce;
- c. Defendant, its officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them who receive notice of this order, and each of them, be permanently enjoined and restrained from:
 - i. Using LivelySkin.com or any other colorable imitation of "LovelySkin.com" in connection with the offering for sale or sale of cosmetics and skin care products;
 - ii. Otherwise infringing the Trademark "LovelySkin", Registration Number 2998098, dated September 20, 2005; and Servicemark "LovelySkin.com", Registration Number 3253791, dated June 19, 2007, and Servicemark "LovelySkin.com" (stylized), Registration Number 2327469, dated March 7, 2000;
 - iii. Unfairly competing with Plaintiff, diluting the distinctiveness of the trademarks and Plaintiff's distinctive packaging, or injuring Plaintiff's business reputation in any manner;
- d. That Defendant be directed to file with this Court and serve on Plaintiff within 30 days after service of the injunction, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has

- complied with the injunction;
- e. That an accounting be held and judgment rendered against Defendant for Plaintiff's attorney fees for:
- i. All profits received from the sale of cosmetic and skin care products identified or advertised in any manner by the use of the trade name LivelySkin.com.
 - ii. All damages sustained by Plaintiff on account of trademark infringement, unfair competition, false designation of the origin of goods, dilution of the distinctiveness of its trademark and injury to its business reputation and that such damage be trebled.
- f. Plaintiff requests a trial by jury and designates Omaha, Nebraska as the place of trial.

LOVELY SKIN, INC., Plaintiff

/s/ Benjamin M. Belmont
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